

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARLENA SONN, : 22-CV-2758 (RPK) (VMS)
Plaintiff, :
:
V. : June 29, 2022
:
KENDALLE P. GETTY, et al., :
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR MOTION
BEFORE THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE COURT: This case is Sonn v. Getty, 22-
2 CV-2758.

3 Let's start with counsel's appearances.
4 Let's get plaintiff's counsel's appearance.

5 MS. COLE: Good afternoon. This is Agatha
6 Cole with Pollock Cohen LLP for Ms. Marlena Sonn. Also
7 on the line we have our legal analyst, Julia Huesa.

8 THE COURT: How do you spell her last name?

9 MS. COLE: H-u-e-s-a.

10 THE COURT: And for defendants?

11 MR. GUNDERSON: Mark Gunderson, Austin
12 Sweet, and David Staley (ph) for Minerva Management,
13 Inc. and Robert Leberman.

14 THE COURT: Okay. And other defense
15 counsel?

16 MS. CLEARY: Lisa Cleary and Hannah Brudney
17 (ph) from Patterson Belknap Webb & Tyler, LLP, for
18 Kendalle Getty as trustee of the Pleiades Trust, and
19 KPG Investments, Inc. as trustee of the Pleiades Trust.

20 THE COURT: Okay. Did you file a notice of
21 appearance?

22 MS. CLEARY: We may not have, your Honor.

23 THE COURT: Okay.

24 MS. CLEARY: But we can do so immediately
25 after the call.

1 THE COURT: Okay. And then anyone else for
2 the defense?

3 MR. AIBEL: Yes, Matthew Aibel and Paul
4 Hastings of Alexandra Getty and ASG Investments.

5 THE COURT: Okay. So we have your -- did
6 somebody join us? Does someone need to make an
7 appearance? No, all right.

8 So we have the joint motion to support the
9 transfer, and I had some questions and if you think
10 there's any other information that I should have, I'm
11 happy to hear it. Sorry, I'm working from home today.
12 It's a little slow on the computer so just give me a
13 second. It may be obvious from the questions. Mostly,
14 they're for the plaintiff but if anybody has other
15 information you want to let me know, you can.

16 So it seems that for the plaintiff, you have
17 both California claims and then Nevada claims. There's
18 some common-law claims. Under what state law are they
19 brought?

20 MS. COLE: Well, I think that that is
21 somewhat up for debate and kind of part of the
22 controversy. To explain what I mean, I guess I would
23 kind of start by saying this is an employment dispute
24 against Ms. Sonn's former employers for unlawful
25 retaliation in violation of California law and for

1 breach of contract as well. Ms. Sonn brought this case
2 in the Eastern District of New York because that is
3 where she lives and works and it is where she lived and
4 worked when she was employed by the defendants.

5 The defendants -- they can speak for
6 themselves but my understanding at least is that they
7 claim that they're all Nevada domiciliaries or
8 residents or Nevada corporations. We don't dispute
9 that some of the corporate entities are in fact
10 incorporated in the State of Nevada, but our view of
11 the case is that the corporation in Reno, Nevada is
12 just sort of a legal fiction that's designed to provide
13 essentially a tax haven for the Getty Trust. And
14 seeing that Ms. Sonn never even visited the Reno office
15 except for once throughout her entire seven-year tenure
16 with the defendants, our view is that the contract
17 should be interpreted in accordance with New York law.

18 That being said, I think that these choice
19 of law issues can be decided separately and apart from
20 the question of venue. Our understanding with respect
21 to venue and jurisdiction is that the defendants are
22 pretty insistent that this should be litigated in the
23 District of Nevada or Nevada state court, and we have
24 come to an agreement that if everyone will agree to
25 litigate all claims in the District of Nevada, we can

1 avoid duplicative litigation, we can avoid -- as you
2 probably already know, as has been briefed, one of the
3 defendants, Kendalle Getty, has filed what we view as a
4 retaliatory lawsuit in state court in Nevada. That has
5 already been removed to Nevada federal district court.

6 But I think at this point, the one thing
7 that the plaintiff, Ms. Sonn, really wants to avoid is
8 a situation where she would be litigating in two
9 different jurisdictions at the same time, at tremendous
10 expense. I think that that would disadvantage her and
11 to some extent the defendants as well, so we've kind of
12 come to this agreement that, you know, let's litigate
13 all claims and counterclaims in the same proceedings in
14 the District of Nevada. Hopefully, that will enure to
15 everyone's benefit. Does that answer the question? I
16 know that was a very long-winded answer.

17 THE COURT: Not really. It's more like your
18 opening statement. Is there a choice of law that the
19 plaintiff has made with regard to under which state's
20 common law she's bringing the common law claims which
21 are in the complaint?

22 MS. COLE: Yes. Our view is that New York
23 law should govern the contract claims and California
24 law should govern the statutory claims.

25 THE COURT: Then with regard to the contract

1 claims, for the contracts that she's claiming are
2 breached, is it right that they all have the Nevada
3 forum selection clause that you reference?

4 MS. COLE: No, they do not.

5 THE COURT: So which ones --

6 MS. COLE: The original employment contract
7 entered into at the very beginning of the relationship
8 has a Nevada choice of law forum. None of the
9 subsequent contracts with respect to her compensation
10 incentive have any choice of forum or choice of law
11 clauses. Those are really, in our view, the contracts
12 that are at issue here.

13 THE COURT: Okay. Just to have the time
14 line right, when was the Nevada state court action
15 filed?

16 MS. COLE: The Nevada state court action --
17 let me pull it up. The Nevada state court action was
18 filed back in -- the complaint in that case is dated
19 March 16th, 2022. But I would just add that to the
20 extent your Honor is asking about the dates in terms of
21 which action is a previously-filed action, our view,
22 based on our research and review of the case law, is
23 that this is a case that was filed in direct response
24 to our reaching out to defendants' counsel to initiate
25 settlement negotiations on the breach of contract claim

1 and retaliation claim. They went and filed this in the
2 state court of Nevada knowing that we were going to
3 file an action in New York if the settlement
4 negotiations didn't go the way -- didn't resolve the
5 matter.

6 There's a lot of case law out there that
7 indicates that this sort of litigation tactic is --
8 this kind of anticipatory filing of litigation does not
9 count as the first-filed action, particularly in cases
10 like this one, where the claims in the first-file
11 action are essentially just defenses to a breach of
12 contract action that had been raised in an affirmative
13 complaint, in an attempt to kind of rob the more
14 natural plaintiff of their choice of venue. That being
15 said, that would be our argument if we were going to
16 contest or dispute these venue issues.

17 But, again, I think the parties have
18 ultimately decided that it would be in all of our
19 interests to proceed in the District of Nevada
20 precisely because we don't want to be in the position
21 of litigating jurisdictional and venue issues in the
22 Eastern District of New York when one federal court or
23 another doesn't make all that much of a difference
24 since the Court can apply whatever law the judge feels
25 is appropriate.

1 THE COURT: So you're anticipating what my
2 substantive question is, right? The theme here is, we
3 can't be spending the time and the money litigating
4 these venue issues. You're just going to litigate in
5 Nevada, even though we should be in New York. My
6 question is, is there a reason other than the effort it
7 would take that the cases are being transferred from
8 Nevada to here?

9 MS. COLE: Yeah. I think to avoid
10 litigation, like you said, but also to avoid
11 duplicative litigation, meaning that if this Court will
12 not transfer this action to the District of Nevada and
13 the District of Nevada will not transfer that action
14 here, then we're going to be forced to litigate in both
15 forums. I think that the District of Nevada would
16 probably transfer that action to the Eastern District
17 of New York if the Eastern District of New York
18 declines to initiate the transfer of venue. But my
19 understanding is that defendants would contest that,
20 and I think it would be a waste of time and plaintiff's
21 resources to get into a dispute over that. But if your
22 Honor is inclined to retain venue and jurisdiction over
23 the case, we can deal with it accordingly.

24 THE COURT: Is there any motion practice in
25 the District of Nevada with regard to the case moving

1 here?

2 MS. COLE: No, there is not.

3 THE COURT: Okay. Anything else on the
4 plaintiff's side?

5 MS. COLE: No, thank you.

6 THE COURT: Defendants, you can do it in any
7 order you like. Those are my questions to just clarify
8 what the record is. If you want to comment on what
9 plaintiff said or if there's something you want to
10 emphasize, I'm happy to hear it. Let's just do it in
11 order of the defendants.

12 Ms. Cleary, your clients are listed first,
13 and then Mr. Aibel, and then for Minerva, whoever wants
14 to speak. Go ahead.

15 MS. CLEARY: Thank you, your Honor. I would
16 like to clarify a couple of factual matters. The
17 employment agreement that Ms. Sonn signed with our
18 clients, Kendalle Getty and KPG Investments, Inc., does
19 have a choice of law and a choice of forum, with the
20 choice of forum saying that venue for any action under
21 this agreement shall lie in the second judicial
22 district court for Washoe County, Reno, Nevada. We
23 further understand that both of the incentive letters,
24 the incentive letter from October of 2017 and March of
25 2021 contain choice of law provisions stating, this

1 letter will be governed by the laws of the State of
2 Nevada, without giving effect to principles or
3 provisions thereof relating to conflicts or choice of
4 law.

5 With respect to the filings, we do agree
6 that our client's local counsel in Nevada did file a
7 complaint in Washoe County on March 16th, 2022 and the
8 same day filed a motion to seal in that same contract.
9 Plaintiff Marlena Sonn waited until May 11th, 2022,
10 nearly two months after Kendalle Getty and KPG
11 Investments had filed their complaint to file an action
12 in the Eastern District of New York.

13 THE COURT: Do you agree that the filing
14 came after plaintiff's counsel reached out to try to
15 initiate negotiations?

16 MS. CLEARY: It is my recollection actually
17 that we reached out to discuss -- meaning on behalf of
18 Ms. Getty and KPG Investments -- to discuss settlement
19 and that plaintiff agreed to do so. So it was our
20 clients who initiated the settlement discussions, not
21 Ms. Sonn.

22 MS. COLE: I'm sorry to interrupt but I just
23 completely disagree with that characterization and I'm
24 happy to provide documentation to the contrary if
25 necessary.

1 THE COURT: Let me ask defendants' counsel
2 one other point. You made the point that the venue
3 provision in some of the documents is for Washoe
4 County. Does it matter that the case has been removed
5 so that actual -- to the extent that's a reference to
6 state courts, this case is not going to proceed in
7 state court in Nevada, at least under its current
8 setup. So what weight does one attribute to the forum
9 selection when the forum selection -- sorry, where the
10 forum selected is not the forum where this case will be
11 heard?

12 MS. CLEARY: I think that the fact that it's
13 been removed by plaintiff to federal court is not
14 dispositive because the anticipated laws to be
15 considered were laws of the State of Nevada, and the
16 federal courts in Nevada have much greater experience
17 dealing with the local state laws of Nevada than the
18 courts in New York would.

19 THE COURT: What about plaintiff's point
20 that there are two, possibly three states whose laws
21 are irrelevant, California for statutory claims, Nevada
22 for some of the claims, and possibly New York, and
23 there would be a choice of law analysis. It depends on
24 what these documents say but plaintiff is saying at
25 least two, maybe three states' laws are in play.

1 MS. CLEARY: The gravamen of her complaint
2 is that she's owed money under the incentive award
3 letters and pursuant to the employment arrangement that
4 she had, and that's going to be the focus of the
5 discovery in the matter. We feel confident that a
6 Nevada federal court could deal with the California tax
7 rules given that it's adjacent to Nevada.

8 THE COURT: Anything else for your clients?

9 MS. CLEARY: I guess we would also just say
10 that New York law really has no relevance to the issues
11 relating to her employment relationship with our client
12 and therefore, the focus should really be on Nevada law
13 in connection with this dispute.

14 THE COURT: For Alexandra Getty and ASG
15 Investments, anything you would like to add or
16 emphasize?

17 MR. AIBEL: Thank you, your Honor. I would
18 just note that ASG Investments has essentially similar
19 agreements with the same governing law and choice of
20 law provisions, as well as that being stated in the
21 incentive award letters. I realize, your Honor, it was
22 an omission on the parties' parts in not providing
23 those as exhibits, so I'm happy to, after the call,
24 file anything on ECF or send to your chambers if you'd
25 like to see those documents, but we are accurately

1 representing their contents in so far as we're stating
2 that they are -- (ui) laws of Nevada.

3 THE COURT: This is for the plaintiff. Do
4 you disagree with what counsel said about the
5 provisions in the documents?

6 MS. COLE: I do not. There is -- I have the
7 incentive letter in front of me now and I do see a
8 sentence at the very end of the general terms that says
9 that this letter will be governed by the State of
10 Nevada. I apologize for that omission or
11 misunderstanding earlier. However -- I'll leave it at
12 that.

13 THE COURT: Anything else for ASG and the
14 individual client?

15 MR. AIBEL: No, thank you, your Honor.

16 THE COURT: And then for Minerva and Mr.
17 Leberman?

18 MR. GUNDERSON: Yes, your Honor. This is
19 Mark Gunderson on behalf of Minerva Office Management
20 and Robert Leberman. Neither of my two clients have
21 any contact with or relationship with Ms. Sonn or with
22 the State of New York. It's all Nevada locus. The
23 offices, the employment agreements that Minerva has,
24 Mr. Leberman are all residents of the State of Nevada
25 and have no relationship to or interest in litigating

1 this case in the State of New York.

2 THE COURT: Okay, all right. Anything else
3 from the plaintiff?

4 MS. COLE: That's all, your Honor.

5 THE COURT: All right. I don't think we
6 need the documents unless somebody feels like there's
7 an open question here on the inclusion of Nevada-
8 related provision in some of the documents. Anybody?
9 Okay. All right. Anything else anybody wants to add
10 to the record.

11 All right, that's all. Thank you for
12 answering my questions. We will review the papers and
13 the transcript and issue a decision. All right, thank
14 you. Take care, everybody.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

July 6, 2022